IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3510 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHETH AND CO TEXTILE PVT LTD

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 3510 of 1990
MR TANVISH U BHATT for Petitioner No. 1-2
MR SIRAJ GORI, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 18/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the amendment order dated

5/6.3.1990 issued by the Assistant Commissioner of Sales-tax (Admn.), Range 5, Surat amending the exemption certificate which was earlier granted to the petitioner on 23.6.1983 having the consequential effect of reducing the extent of exemption which was earlier made available to the petitioner from 50% to 45% for the petitioner's industry set up in village Antalia in Gandevi taluka of Valsad District.

2. The State Government had earlier issued Government Resolution dated 22.12.1977 containing the scheme for sales-tax exemption or sales-tax deferment to new industries set up in certain areas. The extent of exemption varied depending on the location of the industry. The State Government had declared certain areas as growth centres and divided them into four categories :-

(i) "A" Grade growth centre where the extent of exemption was 40%;

(ii) "B" Grade growth centre where the extent of exemption was 45%;

(iii) "C" Grade growth centre where the extent of exemption was 50%;

(iv) "D" Grade growth centre where the extent of exemption was 50% plus additional benefit was to be given with which we are not concerned for the purpose of the present petition.

The same classification of growth centres was adopted when the State Government framed another sales-tax incentives scheme through Government Resolution dated 27.8.1980 under which the petitioner was granted the benefit which is the subject matter of the present petition.

3. The eligibility certificate for the purpose of the above scheme issued by the Joint Commissioner of Industries on 19.5.1983 (Annexure "A/1") stated that the petitioner's unit was located in a "C" grade growth centre. On the basis of the above eligibility certificate, the sales-tax department granted sales-tax exemption certificate dated 23.6.1983 on the basis of the investment made by the petitioner to the tune of Rs.44,83,938/- for setting up its factory in village Antalia area of Gandevi taluka in Valsad district. The petitioner's case is that in view of the above exemption

certificate, the petitioner did not charge sales-tax from its customers and exhausted its exemption limit by 31.10.1986 and thereafter started collecting sales-tax from its customers and paid the same over to the State Government. It was long thereafter on 29.3.1990 that the Sales-tax Officer, Billimora informed the petitioner that the petitioner's factory was located within 5 kms. from Billimora which falls under "B" grade growth centre and, therefore, the petitioner was entitled to sales-tax exemption only to the extent of 45% instead of 50% erroneously granted to the petitioner earlier. The said notice was based upon the amendment order dated 5/6.3.1990 issued by the Assistant Commissioner of Sales-tax which, in turn, was based upon the amendment made by the Industries Commissioner by his letter dated 18.9.1989. As a consequence of the above amendment, the maximum limit of sales-tax exemption came to be reduced from Rs.22,41,959/- to Rs.20,17,000/- for the relevant period between 4.10.1982 to 3.10.1988.

The petitioner, therefore, filed the present petition for challenging the above amendments to the eligibility certificate and the exemption certificate and for restraining the respondents from making any recovery on the basis of the impugned orders. While admitting the petition on 12.10.1990, this Court granted interim relief against such recovery.

4. Mr Tanvish U Bhatt, learned counsel for the petitioners has submitted that the eligibility certificate issued by the Industries Commissioner and the exemption certificate issued by the sales-tax authorities clearly stated that the petitioner's industry was located in a "C" grade growth centre. On the basis of those certificates granted as far back as in the year 1983, the petitioner had availed of the sales-tax exemption incentives and not collected sales-tax from its customers and had even exhausted the exemption limit of Rs.22,41,959/- on 31.10.1986. It was in March 1990 that the respondent authorities came out with the amendment orders reducing the percentage of exemption from 50% to 45% by changing the grading of the growth centre and consequently reducing the limit of exemption from Rs.22,41,959/- to Rs.20,17,000/-. It was, therefore, not possible for the petitioner at that stage to recover any sales-tax from its customers to whom the petitioner had sold the goods between 1983 and 1986. The petitioner had acted upon the certificates issued in 1983 and changed its position to its detriment by not collecting the sales-tax from its customers to the extent of Rs.22,41,959/-. By the impugned orders passed seven

years after issuance of the original certificates and four years after the petitioner exhausted the sales-tax exemption limit, the respondent authorities purported to take away the sales-tax exemption incentives to the tune of Rs.2,48,375/- which the petitioner would never be able to recover from its customers. The petitioner cannot thus be deprived of the right which had already vested in him.

5. On the other hand, Mr Siraj Gori, learned AGP for the respondent - authorities has submitted that since village Antalia was within the radius of 5 kms. from Billimora which was a "B" grade growth centre, the petitioner was not entitled to sales-tax exemption for more than 45% as per the incentive scheme and, therefore, the authorities were justified in passing the impugned amendment orders to correct the mistakes made while issuing the original certificates.

6. Having heard the learned counsel for the parties, we find that it is not the case of the respondents that there was any misrepresentation on the part of the petitioner. It was the decision of the authorities in 1983 to classify the petitioner's industry as falling in "C" grade growth centre and to grant the petitioner sales-tax incentives on that basis. The petitioner acted upon the same and did not collect sales-tax from its customers to the extent of the exemption limit indicated in the exemption certificate which was issued on 23.6.1983 and even exhausted the exemption limit by 31.10.1986 and thereafter started collecting sales-tax from its customers and paid the same over to the State Government. By amending those eligibility/exemption certificates in the year 1990, what the respondents have done is to purport to give retrospective effect to those amendments and take away the benefits which were already vested in the petitioner. The respondents could not have done so without inviting the charge of arbitrariness and unfairness violative of the petitioner's fundamental right under Article 14 of the Constitution. The petitioner is, therefore, entitled to succeed.

7. The petition is accordingly allowed. The impugned order dated 5/6.3.1990 of the Assistant Commissioner of Sales-tax, Surat (Annexure "A/3") and the impugned order dated 29.3.1990 (Annexure "A/2") issued by the Sales-tax Officer, Billimora are quashed and set aside.

8. Rule is accordingly made absolute with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-